

DECLARATION OF ELON R. MUSK

I, Elon R. Musk, declare as follows:

1. I am the co-founder and Chief Executive Officer at Tesla, Inc. (“Tesla”). I have personal knowledge of the facts set forth in this Declaration and, if called to testify, I could and would testify competently thereto.

2. I submit this Declaration in support of the Response To Order To Show Cause Why Defendant Elon Musk Should Not Be Held In Contempt For Violating The Court’s Final Judgment.

3. On September 28, 2018, I was party to a Consent Motion for Entry of Final Judgment in the matter of *Securities & Exchange Commission v. Musk*, 18-cv-08865-AJN. This Court entered Final Judgment on October 16, 2018 (the “Order”). The Order requires, among other things, that I comply with certain “mandatory procedures” implemented by Tesla. These procedures include “the pre-approval” of “written communications that contain, or reasonably could contain, information material to” Tesla or its shareholders.

4. As required by the Order, Tesla subsequently developed a policy for the “pre-approval” of written communications, referred to as the Senior Executives Communications Policy (the “Policy”). The Policy went into effect on December 11, 2018.

5. The Policy tracks the language of the Order, providing that any “Authorized Executive” must submit to Tesla’s General Counsel and Disclosure Counsel for pre-approval “Written Communications” that “contain, or reasonably could contain, information material to Tesla or its stockholders.” As Tesla’s CEO, I am an Authorized Executive, and I understand I must abide by the Policy.

6. The Order and the Policy vest the relevant Authorized Executive with discretion to determine in good faith whether a Written Communication “contain[s], or reasonably could contain,” material information, and thus whether it requires pre-approval. Accordingly, when I issue a written statement (including a tweet), I exercise, in good faith, the discretion granted to me to determine whether the statement contains, or reasonably could contain, material information. This grant of discretion was carefully negotiated with the Securities and Exchange Commission

1 (the “SEC”). I did not and would not consent to a court order or to a policy that operated as a gag  
2 or prior restraint on my ability to speak about Tesla. But because the Order and the Policy allow  
3 me to make good-faith determinations of the materiality of my communications before publication,  
4 I agreed to them.

5         7. I have taken my obligation to comply with the Order and the Policy seriously.  
6 Among other things, I have dramatically decreased the amount that I tweet about Tesla. Compared  
7 to the months of May, June, and July 2018, during the three months following the entry of the  
8 Order (November and December 2018 and January 2019), I have cut my average monthly Tesla-  
9 related tweets nearly in half. This is not because I am concerned about non-compliance, but rather  
10 because I want to err on the side of caution to avoid unnecessary disputes with the SEC. I have  
11 also taken steps to ensure that, when I do tweet information, I am compliant with the Order and the  
12 Policy. The Disclosure Counsel and other members of Tesla’s legal department have reviewed the  
13 updated controls and procedures with me on multiple occasions. With my knowledge and  
14 approval, Tesla’s General Counsel and Disclosure Counsel have been reviewing all tweets  
15 promptly in real time upon publication to double-check compliance with the Policy and to ensure  
16 that any errors are caught and rectified quickly. Additionally, since the entry of the Order and the  
17 enactment of the Policy, I have not tweeted information that I believe is, or could reasonably be,  
18 material.

19         8. At 7:15 p.m. Eastern Time on February 19, 2019, I posted a tweet that celebrated  
20 Tesla’s success since 2011 and exhibited pride for what Tesla anticipated achieving in 2019. The  
21 7:15 tweet was part of the same chain as a 7:02 p.m. Eastern Time tweet, which showed a picture  
22 of thousands of Tesla cars headed from San Francisco to Europe. Those two tweets are reproduced  
23 here:



**Elon Musk** @elonmusk · Feb 19  
4000 Tesla cars loading in SF for Europe



5.5K 19K 228K



**Elon Musk** @elonmusk

Follow

Tesla made 0 cars in 2011, but will make around 500k in 2019

4:15 PM - 19 Feb 2019

10,407 Retweets 145,005 Likes



2.6K 10K 145K

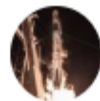
9. The 7:15 tweet reflected information that had already been publicly disclosed in Tesla's Form 8-K, published on January 2, 2019; Tesla's Fourth Quarter and Full Year 2018 Update, published on January 30, 2019; the associated earnings call, also on January 30, 2019; and

1 Tesla's Annual Report (Form 10-K), filed with the SEC the same day as the tweet (February 19,  
2 2019).

3 10. Because the 7:15 tweet only repeated publicly-disclosed information, and was a  
4 reflection of my pride in Tesla's success and its future, I did not believe that it contained, or  
5 reasonably could contain, any information material to Tesla or its shareholders.

6 11. To be clear, notwithstanding the SEC's contempt motion, I continue to believe that  
7 the 7:15 tweet did not contain any information material to Tesla or its shareholders. If I believed  
8 otherwise, I would not have issued the tweet without pre-approval under the Policy.

9 12. After the 7:15 tweet, I spoke with Tesla's Disclosure Counsel. After consultation, I  
10 continued to believe that the 7:15 tweet neither contained, nor reasonably could contain, material  
11 information. However, out of an abundance of caution and because pundits and others were  
12 consistently looking for any reason to criticize me or Tesla, I posted another tweet at 11:41 p.m.  
13 Eastern Time. That tweet is reproduced here:



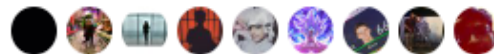
14 **Elon Musk**   
15 @elonmusk

Follow 

16 Meant to say annualized production rate  
17 at end of 2019 probably around 500k, ie  
18 10k cars/week. Deliveries for year still  
19 estimated to be about 400k.

20 8:41 PM - 19 Feb 2019

21 1,848 Retweets 52,286 Likes



22  1.6K  1.8K  52K

23  
24  
25 13. There is no doubt that I have been a vocal critic of the SEC's approach to protecting  
26 shareholders, as I believe that they materially and disproportionately favor short-term over long-  
27 term constituencies. However, there can also be no doubt that I am tirelessly working, along with  
28 my team at Tesla, on creating value for our shareholders and attempting to accelerate the world's

1 transition to sustainable energy. That is, the shareholder protection goal that should be at the heart  
2 of the SEC's mission is one that I share emphatically.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed on this 11th day of March, 2019, at Los Angeles, California.

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8 Elon R. Musk  
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